IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/11/2004

Coram

The Honourable Mr. Justice P.K.MISRA
and
The Honourable Mr. Justice D.MURUGESAN

Writ Petition No.15218 of 2000

A.Rajendran .. Petitioner

-Vs-

1. The Registrar of High Court,
Madras.

2. The Principal District Judge,
Madurai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus as stated therein.

For petitioner: Mr. R.Muthukannau

For respondents:Ms. G.Kavitha
Government ADvocate

:O R D E R

(Order of the Court was made
by P.K.MISRA, J).

Heard the learned counsel appearing for the parties.

2. The petitioner has filed this Writ Petition challenging the order passed by the second respondent in Proceedings D.E. No.1 of 1994 as confirmed by the Appellate Authority imposing punishment of compulsory retirement.

3. The facts giving raise to the present Writ Petition are as follows:
The petitioner entered service as Bailiff and, subsequently, he was promoted as Senior Bailiff. While he was so working, a departmental enquiry was initiated against him on the following three charges:

"1. for having demanded and received Rs.50/- as bribe from one Thiru G.Sundararajan, Manager, Shri Elumalaiyan Finance Company, Madurai at his Office at about 8.30p.m. on 9.8.93 for arresting the respondents in

E.P.623/92 on the file of Additional District Munsif's Court Madurai Town.

2. for having also demanded Rs.300/- as bribe from Thiru G. Sundararajan, Manager, near Amsavalli Hotel, Madurai for arresting the respondents in E.P.623/92 on the file of Additional District Munsif's Court, Madurai Town on 10.8.93 and stated to him that he would not execute the warrant if he has not paid the said amount. Since G.Sundarajan, had refused to pay the demanded amount, he has not arrested the respondents in the above proceedings and he had returned the arrest warrant to the concerned Court without execution, and failed to do his legitimate duty;

3. and further that you had also demanded and received Rs.2/- as bribe, for travel expenses from Thiru G.Sundararajan, Manager, Sri. Elumalaiyan Finance Company on 10.8.93."

A domestic enquiry was held and on the basis of the report filed by the Enquiry Officer holding that the petitioner was guilty of charge No.1, the petitioner was called upon to show cause as to why punishment should not be imposed. Ultimately, by order dated 26.2.1996, the second respondent imposed the punishment of compulsory retirement. Thereafter, the petitioner filed an appeal before the High Court, which was rejected by the appropriate Administrative Committee of the High Court.

4. Learned counsel appearing for the petitioner has contended that at the enquiry, two of the charges had not been established, and the finding regarding delinquency of the petitioner relating to Charge No.1 based on self-same tainted evidence of the witnesses, whose evidence had not been accepted in respect of the two other charges, cannot be sustained. It is also submitted that the appeal petition of the petitioner was rejected without indicating the reasons for such rejection. It is further contended that as observed by the District Judge himself, no other allegation had been brought against the petitioner during his long career and merely on the basis of one single incident, the order of compulsory retirement appears to be grossly disproportionate.

5. We have carefully gone through the order passed by the Disciplinary Authority. The Disciplinary Authority has referred to relevant materials on record relating to Charge No.1 and has come to the conclusion that such charge has been established. The High Court, while dealing with such matter in a proceeding under Article 226 of the Constitution of India, does not sit as an Appellate Authority over the conclusions of the Disciplinary Authority based on the materials on record. The High Court can interfere with the impugned order only after it comes to the conclusion that the findings of the Disciplinary Authority are based on no evidence or are such which no reasonable man could have reached on such materials. Since in the present case, the Disciplinary Authority has sifted the materials on record relevant for the purpose and has come to the particular conclusion which has been confirmed in appeal by the Appropriate Committee, we hardly see any reason to come to a different conclusion while deciding the Writ Petition under Article 226 of the Constitution of India. The conclusions arrived at by the District Judge cannot be characterised as perverse or based on no evidence

so as to warrant interference. The contention that the appellate authority, has not assigned any reason while confirming the order is also untenable. We find that the appellate authority has independently applied its mind and has generally affirmed the conclusions. Therefore, the main submission of the learned counsel for the petitioner cannot be sustained.

6. Learned counsel for the petitioner then submitted that, at any rate, the punishment appears to be grossly disproportionate and a lesser punishment could have been imposed. There is no doubt that in appropriate cases, the High Court can interfere with the quantum of punishment when it comes to the conclusion that the punishment imposed is grossly disproportionate to the nature of delinquency. The conclusion that the petitioner had demanded Rs.50/- and had received such amount as a condition for executing the warrant in the execution case, is a serious conclusion touching upon the integrity of the person who had been posted in a sensitive posting relating to execution of decrees. Any dereliction of duty, particularly, touching upon the integrity of the person in such posts will obviously denude the confidence of the litigant public in the system and such delinquencies are required to be curbed by imposing exemplary punishment. As a matter of fact, in the present case, the District Judge seems to have taken a lenient view and imposed the order of punishment of compulsory retirement so that the petitioner would not be deprived of his pensionary benefits. This itself indicates that the District Judge has adopted a rather humanistic approach. Even though, in the facts and circumstances of the case, an order of dismissal or removal of service could have been imposed, a rather lenient view seems to have been taken by the Disciplinary Authority and it would be a case of misplaced sympathy if such punishment is further diluted by reinstating the petitioner and imposing any other lesser punishment. Any further leniency in the matter would rather give a wrong signal. Persons employed in the judiciary in whatever capacity, like Caesar's wife, should be

above suspicion in their dealing to the litigant public and there is hardly any scope for leniency in such matters where corruption is proved against any delinquent.

7. Leaned counsel for the petitioner has placed reliance upon the decision of the Supreme Court in 1998 (Supp) Court Cases 436 (M.A.Khalsa vs. Union of India and others) where the Supreme Court interfered with the order of dismissal in respect of railway servant who had misappropriated money by making false claim for honorarium payable to another employee. The facts and background of the said case cannot be equated with the present case. On the other hand, there are several decisions of the Supreme Court indicating that in matters of corruption, there is no scope for showing any leniency, would be rather attracted to the present case, particularly, when the person was employed in the judiciary.

8. Learned counsel for the petitioner has also relied upon the decision of the Punjab and Haryana High Court reported in 2004 (2) Administrative Total Judgments 306 (Union of India and others vs. Gurvinder Singh and Others), Wherein the removal of a person from service on the basis of solitary incident of misbehaviour was interfered with by the Tribunal and ultimately upheld by the High Court. We do not think that the ratio of the

said case can be applied to the present case.

9. The other decision relied upon by the learned counsel for the petitioner viz., AIR 1998 SC 3058 (M.S.Bindra vs. Union of India) related to the question of compulsory retirement under Rule 56(j) of the Fundamental Rules, where it was observed that a single lapse even relating to integrity did not warrant compulsory retirement. We do not think that the ratio of such decision in a matter relating to compulsory retirement under 56(j) of Fundamental Rules ought to be applied to the present case.

10. Since all the contentions raised by the learned counsel for the petitioner are unacceptable, the present Writ Petition is liable to be dismissed. However, there is no order as to costs.

Index:yes
Internet:yes
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To
1. The Registrar of High Court,
Madras.
2. The Principal District Judge,
Madurai.

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